Appendix.

TEXAS SULPHUR COMPANY, INCORPORATED,
Libellant-Appellant,

v.

STEAMSHIP PLOW CITY, AND PLOW CITY STEAMSHIP COMPANY, HER CLAIMANT,
Respondent-Appellee.

MEMORANDUM IN RE PROCEEDINGS.

WELSH, D. J., September 12, 1941:

There came to my desk yesterday afternoon the official copy of the opinion of the Circuit Court of Appeals in the above case. Judicial etiquette, personal regard, and official respect make it difficult for me to comment on the subject further than to recount the actual steps taken in the case. Personal feelings have no weight in the matter. But inasmuch as the opinion reflects upon the efficiency of the Court for the Eastern District of Pennsylvania and has been given wide publicity, I feel it my duty as a District Judge to make a statement of the actual facts and conditions under which this case was tried.

The case was one that was vigorously contested by opposing counsel. Neither side would compromise any phase of the subject, and each insisted on his strict legal rights. This is not said in criticism. At the time this case was first listed for trial, March 2, 1939, until its final conclusion on Decemebr 7, 1939, I can say that there was

no delay in the procedure which the Trial Judge could in any way have avoided. At that time Judge DICKINSON was not well and we were lacking two judges which were subsequently provided by Congress to meet the requirements of the overcrowded calendar in this District. The case was listed again for March 3, 1939, and March 7, 1939. Then came the big term of criminal court, which lasted to April. From March 7, 1939, due to the criminal business of the Government, which devolved at that time almost entirely upon me, the case was listed for the 5th of April. On this date counsel for the respondent could not be present because of professional duties elsewhere. Immediately after that a most important witness who had been subpœnaed by the libellant had to leave on his ship for the Pacific Coast, and counsel for libellant said he did not know just when he would return. This was apparently followed by the taking of certain depositions. The witness who left for the Pacific Coast did return on or about June 12. This was right in the middle of the June term of criminal court. The Government had important cases, with large numbers of witnesses under subpœna. Notwithstanding that, the case was listed specially for the week following (June 19th) and in order to meet the necessities of the case the Court held an evening session, for which counsel expressed appreciation. The June criminal court continued until the last of June or early in July when the summer recess took effect. On August 31, 1939, counsel for the libellant asked for a continuance until late in September. No objection was made to this request which was personal in nature.

The September term of criminal court began on the third Monday of that September and was one of the most

important sessions of that year. It lasted well along until the end of October. The Clerk of the court had been instructed at the outset to list this case at every available opportunity, and the first dates open after the September criminal court closed in October were November 27th, 28th and 29th, when full hearings were had. The next available dates were December 5th, 6th and 7th, 1939, on which dates the hearings were conducted. I could not ask another Judge to try this case as I had already proceeded with the hearings.

The Court wishes to state that early in the proceedings he offered to sit at night so that this case could be conducted with dispatch. This suggestion did not meet with approval, so only one night session was held.

It should also be stated that during this time the Philadelphia Rapid Transit Company reorganization was before me; it had reached the crucial stage leading up to a hoped-for final solution of a vexing problem of years. The Court also wishes to state that on every day during this period he was in court, with the exception of certain Saturdays and legal holidays.

I am not surprised that a reading of the bare chronology of trial dates by the Judges of the Circuit Court should cause some wonderment as to the length of time over which the case was spread. I personally have very acute recollections of the amount of time taken by this case, and during the progress of the trial, being somewhat impatient at the delays, I used the following language from the bench (this language appears on pages 581, 582 and 583 of the stenographic notes of the testimony):

"I don't mind telling you gentlemen—I don't want to say this in criticism, I esteem you gentlemen too much to

criticize you—this case has taken too long to try. I am not at all satisfied with the conduct of this case.

"We were discussing in the Circuit Court of Appeals yesterday just a typical case of this nature. We were discussing the welfare of matters in this district in accordance with the Act of Congress recently passed. We all understood in admiralty cases we had to have a little bit more latitude, and cases had to be prolonged in their preparation and in their defense because of the absence of the men on board the ships.

"But if this district is to keep up the standard of efficiency that it would like to keep up and maintain we have to proceed with more expedition and a little bit more efficiency in these trials. As far as I am concerned, I expect to try a great deal of admiralty work here. Now that Judge DICKINSON has passed away I expect to take over a great deal of the admiralty work, and I want to do everything I possibly can to make this forum a proper place for trying admiralty cases. I want to build up our port, I want to build up our admiralty bar. The only way we can do both is for counsel, and the Court, and the ship owners, and everybody concerned to make it an efficient forum for the adjudication of disputes, and it can't be done if we are going to resort to unnecessary delay."

Long experience has taught me that you cannot try an admiralty case like this in consecutive hearings as you would an ordinary civil suit. The men who go down to the sea in ships for generations have not been dealt with in accordance with the strict rules of the usual judicial procedure. No single trial Judge can revise this system.

BILL OF LADING—LIBELLANT'S EXHIBIT 1.

(Printed at Request of Counsel for Respondent.)

B/L No

Cable Address: Lonstarsul, New York.

TEXAS GULF SULPHUR COMPANY

(Incorporated)

Mines at
Gulf, Matagorda County, Texas.
Newgulf, Wharton County, Texas.
Long Point, Fort Bend County, Texas.

General Offices
75 East Forty-Fifth Street
New York

Ocean Shipping Office
Galveston, Texas

Cargo

1015	Gross	tons	in	1	Hold
1786	"	"	"	2	"
1650	"	"	"	4	"
400	"	"	"	5	"
	"	"	"		"
	"	"	"		"
	"	"	"		"

Total 4851 Gross Tons

Time used in loading 8 Hrs 45 Mins

It Is Also Mutually Agreed that this shipment is subject to all the terms, provisions of, and all the exemptions from liability, contained in the Act of Congress of the United States, entitled "An Act relating to navigation of vessels, etc., approved on the 13th day of February, 1893, and of the Statutes amendatory thereof, and supplemental thereto.

SHIPPED in good order and condition by

TEXAS GULF SULPHUR COMPANY, INCORPORATED

in and upon the good AMERICAN STEAMSHIP called the PLOW CITY whereof R. KRAMER is Master for the present Voyage and bound for NORFOLK, VA. with liberty to call at any ports, to sail without pilots, and to tow and assist vessels in distress, and to deviate for the purpose of saving life and property:

FORTY EIGHT HUNDRED FIFTY ONE (4851) GROSS TONS
CRUDE SULPHUR IN BULK

which are to be delivered in like good order and condition at the said Port of NORFOLK, VA.

The Act of God, the King's Enemies, Restraint of Princes and Rulers, Perils of the Sea excepted. Also Fire, Barratry of the Master and Crew, Pirates, Collisions, Stranding, and Accidents of Navigation, or latent defects, in, or accidents to, Hull, and/or Machinery, and/or Boilers always excepted, even when occasioned by the negligence, default or error in judgment of the Pilot, Master, Mariners, or other persons employed by the Shipowner, or for whose Acts he is responsible, not resulting, however, in any case from want of due diligence by the Owner of the Ship, or by the Ship's Husband or Manager.

Unto ~~order of~~ TEXAS GULF SULPHUR COMPANY
~~Notify~~ c/o NORFOLK TIDEWATER TERMINALS, NORFOLK, VA. or THEIR Assigns, he or they paying freight for the same as per Charter Party dated MARCH 26th., 1937 all the terms and exceptions contained in which Charter are herewith incorporated.

General Average payable according to York/Antwerp Rules, 1924.

IN WITNESS WHEREOF, the Master or Agents of said Ship hath signed THREE Bills of Lading, all of this tenor and date, drawn as a set consecutively numbered, any one of which being accomplished, the others to be void.

R. K.
Master.

Galveston, Texas, OCTOBER 10th., 1937

(Loaded at Pier 35)